IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

S.T.Rev..No.300 of 2003

T.A.NO.476/1997 OF THE KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOTTAYAM.

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REVISION PETITIONER/APPELLANT:-

P.N.SADASIVAN,
SOUTHERN INDUSTRIES,
KOLLAKKADAVU INDUSTRIAL ESTATE,
MAVELIKKARA.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V. MENON.

RESPONDENT/RESPONDENT:-

STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 02/08/2007, ALONG WITH S.T.REV.308 OF 2003 & CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & HARUN-UL-RASHID, J.

S.T.Rev. Nos. 300 of 2003, 308 of 2003, 311 of 2003
316 of 2003, 317 of 2003 & 332 of 2003

Dated this the 2nd day of August, 2007.

O R D E R

H.L.Dattu, C.J.

Since common questions of law and fact are involved in these revision petitions, they are clubbed together, heard and disposed of by this common order.

2. In these revision petitions, the petitioner calls in question the legality or otherwise of the order passed by the Kerala Sales Tax Appellate Tribunal in T.A.Nos. 476 to 481 of 1997 dated 11th February, 2003. By the impugned order, the Tribunal has rejected the claim of the petitioner for levying reduced rate of tax on interstate sales as provided under Section 8 (2A) of the Act.

3. The facts in nutshell are as follows: The petitioner is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 and Central Sales Tax Act, 1956 (herein after referred to as the "KGST Act" and "CST Act") . The petitioner is a small scale industrial unit engaged in the manufacture and sale of tread rubber.

4. In these revision petitions we are concerned with the assessment years 1988-1989, 1989-1990 and 1990-1991. The assessing authority by the aforesaid orders has completed the assessment both under the KGST Act and CST Act. In these revision petitions, we are only concerned with the assessment orders passed by the assessing authority under the provisions of the CST Act. The claim of the petitioner before us is to apply the reduced rate of tax while computing the tax liability under the CST Act by applying the order

passed by the State Government in G.O.(MS) No.124/88/ID dated 31-8-1988. The assessing authority has rejected the claim of the petitioner on the ground that the exemption that is granted under the Government Order is not in the nature of a general exemption, but under specific circumstances.

5. The assessee being aggrieved by the order so passed by the assessing authority has carried the matter by way of first appeal before the first appellate authority. The appellate authority after referring to the Government Order/notification has partly allowed the claim of the assessee. For doing so, the appellate authority has assigned the following reasons. The same are as under:

> "I have considered the merits of the contentions raised and perused the connected records. According to the assessing authority, the general rate of tread rubber during the assessment years 1988-89, 89-90 and 90-91 is 12.5% (GST10% + 25% AST). In the absence of C forms the assessing authority levied tax at 12.5% on the interstate sales turnover of tread rubber for the above years. The assessing authority observed that rate of tax applicable to rubber produce was 12.5% vide entry 200 of the 1st schedule and the reduction of rate vide GO(M)128/86/31-8-88 is not general reduction within the meaning of section 8(2A), that in anticipation of higher rate the assessee had collected CST at 10% and in the absence of C form the rate of tax applicable to the interstate sales of tread rubber is 12.5% and this aspect is well settled by the Honourable Supreme Court in the case of State of Rajasthan & others vs. Sarvotham Vegitable Products, 101 STC 1996. The Honourable Supreme Court in the above case held that "Even for sales of goods, the rate of tax for which are governed by a notification under Section 8(5) granting exemption or prescribing a lower rate, there is obligation to produce the C form". After the pronouncement of the above judgment, the Government of Kerala issued a clarification regarding the above judgment

of No.27193/B1/TD dt.14-2-97, which reads as follows:

> I am to invite a reference to the letter cited and to inform you that the challenge in Writ Appeal in State of Rajasthan and another vs. Sarvotham Vegetables Products and others (1996) 4 KTR (SC) in regard to the notification issued under sub-section (5) of Section 8 of the Rajasthan Sales Tax Act, 1954 is that the only conditions which a dealer seeking to avail of the above benefit of the notification is to satisfy those mentioned in the notification and no other. In other words, the condition mentioned in sub-section (4) of Section 8 cannot be insisted upon as a condition for obtaining the benefit under the notification which according to the Supreme Court is misconceived and the Division Bench of the High Court has erred grievously in accepting it.
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> 2. The opinion of the State Government that the action of the Sales Tax Officials in having demanded higher rate of tax from the SSI units on the ground that there is no mention about their products in the explanatory note of the notification No.431/91 dated 30-3-1991 is highly irregular, unsustainable and will not come within the purview of the judgment as the point in question in the present case is whether the explanatory note of a statutory notification have overriding effect on the notification. The subject matter of the decision mentioned by the Board of Revenue and in the present case are entirely different and as such there is no reason to deviate from the earlier opinion of the State Government.

It is seen that the assessing authority levied 12.5% tax on the interestate sales of tread rubber without considering the above clarification of the Govt. of Kerala. Considering the above facts and circumstances of the case, I am of the opinion that the above issue requires re-examination at the hands

> of the assessing authority in view of the clarification of Govt. So the assessing authority is directed to examine the rate of tax on interestate sales of tread rubber without C form in the light of the clarification by Govt. as per letter No.27193/B1/96/TD dated 14-2-97 and in accordance with law and adopt the correct rate of tax for the years 1988-89, 89-90 and 1990-91".

6. Aggrieved by the order so passed by the first appellate authority, the assessee carried the matter by Second Appeal before the Tribunal in T.A.Nos.476 to 481 of 1997. The Tribunal by its order dated 11th February, 2003 has rejected the claim of the petitioner. While doing so, the Tribunal has stated as under.

> "The next contention of the authorised representative is that as per Government order No.G.O. (M.S.) No.124/88/ID dt.31-8-1988 the rate of sales tax in respect of finished rubber goods produced from factories in Kerala has reduced to 3%. Accordingly the sales tax leviable under the KGST Act is only at the rate of 3% on the sale of finished product (Tread rubber) manufactured by the assesses. The reduction in the rate of tax has been made without stipulating any restriction or condition and that the reduction is not for any specified period and that the reduction is general in nature and not under any specified condition or restriction.
> Therefore the reduction in the rate of tax sought to be treated as a general reduction in respect of the sale of finished rubber goods produced from factories in Kerala. According to the revenue G.O. (MS) 124/88/ID/31-8-88 was not issued under Section 8 (5) of the CST Act and so the reduced rate of 3.75% was not applicable in the case of interstate sale. We find force in the arguments advanced by the revenue. If the rate of tax on a particular good in the state is generally lower than 4% the rate of tax applicable to inter state sale in such cases shall be calculated at the lower rate. (Sec 8 (2A). In the instant case, the general rate applicable to rubber product was 10% plus 25% Addl. Sales Tax (Entry 200 of the Ist Schedule). Since the reduction of rate

> as per G.O.(M.S.)124/88/ID/dt.31-8-88 is not a general reduction within the meaning of Sec.8 (2A) lower rate as specified in the G.O. Is not applicable. The Government circular No.27193/B/86/TD dt.14-2-97 is not squarely applicable in this case. This issue is, therefore, decided in favour of the revenue."

7. The assessee aggrieved by the order so passed by the Tribunal in T.A. Nos. 476 to 481 of 1997 is before us in these revision petitions filed under Section 41 of the KGST Act.

8. In the memorandum of revision petitions, the assessee has framed the following questions of law for our consideration and decision. They are as under.

> "A. Whether on the facts and in the circumstances of the case has not the Appellate Tribunal gone wrong in holding that the reduction in rate of tax on the sales turnover of the rubber goods by G.O.(MS) No.124/88/ID dated 31-08-88 is not a general reduction within the meaning of Section 8 (2A) of the CST Act?
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> B. Is not the reduction in the rate of tax on the sales turnover of rubber goods provided by Annexure-A order unconditional, not in specified circumstances, not at specified stages and not with reference to turnover of goods and therefore a general reduction in the rate of tax as provided under Section 8 (2A) of the CST Act?

9. Adv.Smt. Meera V. Menon, the learned counsel appearing for the assessee vehemently contended before this Court that the order passed by the State Government granting exemption/reduced rate of tax is in the nature of general exemption and therefore, the assessing authority ought to have granted the relief from tax liability by applying the provisions of Section 8(2A) of the

CST Act. Elaborating this contention the learned counsel would submit that the exemption that is granted is on the sale of finished rubber goods. That only means all sales of rubber goods are generally exempted and if that be so, the assessing authority was not justified in rejecting the claim of the assessee from grant of reduced rate of tax while computing the tax liability under the provisions of the CST Act. In support of the contention, the learned counsel has invited our attention to the decision of the Andhra Pradesh High Court in the case of Anandi Roller Flour Mills Ltd. Vs. Commissioner of Commercial Taxes [(2001) 122 STC 597]. That was a case where a notification was issued by the State Government granting exemption from levy of tax payable under the Andhra Pradesh General Sales Tax Act on the sale and purchase of wheat and wheat products by the Roller Flour Mills within the State for a period of 5 years with effect from the date of publication of the notification. The Court taking into consideration, the view expressed by the Apex Court in the case of Commissioner of Sales Tax, Jammu and Kashmir and Others Vs. Pine Chemicals Ltd. And Others [(1995) 96 STC 355] has opined that the notification issued by the State Government is in the nature of a general exemption and therefore the assessee therein is entitled for exemption from payment of tax under the provisions of the CST Act.

10. At this stage itself, we would like to state that, the decision so rendered by the Andhra Pradesh High Court is without reference to the law declared by the Apex Court in the case of State of Uttar Pradesh and Another Vs. Hindustan Safety Glass Works (P.) Ltd. [(1996) 101 STC 529). In that view of the matter, we respectfully disagree with the view expressed by the Andhra

Pradesh High Court in the aforesaid decision.

11. To answer the submissions made by the learned counsel appearing for the assessee, in our view, the notification/order issued by the State Government in G.O.(M.S.)No.88/ID/dt.31-8-88 requires to be extracted. The said order is as under.

GOVERNMENT OF KERALA

Abstract

Industries -setting up of rubber industries in Kerala concessions and reliefs-granting of- orders issued.

INDUSTRIES (J) DEPARTMENT

G.O.MS.124/88/ID Trivandrum, Dated 31-8-1988

ORDER

The question of encouraging the rubber based industries in Kerala had been engaging the attention of Government for some time past and as rubber is an important raw material for industries, the State Government had been thinking to give further encouragement for setting up more rubber industries in the State. With this end in view, a meeting was held inviting all those concerned to discuss the ways and means of inducing more industries using rubber as raw-material inside the state. The consensus arrived at the meeting was that there was need for giving some concessions and relief to the new entrepreneurs for starting rubber industries.

Government considered the various suggestions made by the rubber manufacturers and technical experts and have decided to extend the following concessions to promote rubber industries.

1). Rubber to be used for new industries in Kerala will be exempted from levy of purchase tax.

2). An additional capital subsidy of 5% will be given to new rubber industries to be set up in Kerala and this subsidy will be in addition to the

Central/State subsidy now available to the industries.

3). Sales tax on finished rubber goods produced from Factories in Kerala will be reduced to 3%."

12. The preamble clearly indicates that it was to encourage the setting up of rubber industries in the State. It is in the nature of incentive granted to the new entrepreneurs to establish more and more industries using rubber as raw materials in the State. Yet another important aspect that can be inferred from the said Government Order is to grant relief from the tax effect to the new entrepreneurs for starting a rubber industry. The Government Order provides certain concessions, exemptions and incentives to the new rubber industries such as rubber used in the new industries will be exempted from levy of purchase tax; the industries would also be entitled for subsidy from the State Government and lastly, for the finished rubber goods produced from the factories in Kerala and their sales effected, sales tax would be reduced to 3%.

13. The question now that falls for our consideration is whether the notification/orders issued by the State Government is in the nature of a general exemption or a notification attached with a specific condition. What is a general notification and what is a notification under specified circumstances is explained by the Apex Court in the case of **Commissioner of Sales Tax, Jammu and Kashmir and Others Vs. Pine Chemicals Ltd. And Others [(1995) 96 STC 355)**. In the said decision the Court has made the following observations.

> "Exemption from Central sales tax under section 8 (2-A) of the Central Sales Tax Act, 1956, of the sale or purchase of goods is available only where the sale or purchase of such goods is exempt "generally" under the State sales tax law. The court must give due regard and attach due meaning to the expression "generally" in section 8 (2-A) which expression has been defined in the Explanation thereto. Section 8 (2-A) requires specifically that such exemption must be a general exemption and not an exemption operative in specified circumstances or under specified conditions. General exemption means that the goods are totally exempt from tax. Where the exemption from taxation is conferred by conditions or in certain circumstances there is no exemption from tax generally."

14. The aforesaid decision of the Apex Court was noticed in a subsequent decision by the Apex Court in the case of State of Uttar Pradesh and Another Vs. Hindustan Safety Glass Works (P.) Ltd. [(1996) 101 STC 529). That was a case where the State Government had issued a notification to certain industries which manufacture goods in the State for a period of three years from the date of publication of the notification. The assessee therein had claimed exemption from payment of tax under the CST Act on the ground that the State has exempted sales of a specified goods for a particular period. The assessing authority had rejected the claim. However, the High Court had accepted the stand of the assessee. The Apex Court after referring to the earlier decision including the decision in **Commissioner of Sales Tax, Jammu and Kashmir and Others Vs. Pine Chemicals Ltd. And Others [(1995) 96 STC 355)**, was pleased to state as under.

> "In the instant case, the exemption has not been granted to the goods generally. Specified goods (mirrors and toughened glass) produced by a specified company have been exempted from

> payment of sales tax for a specified period of time. It is not the case of the assessee that mirrors and toughened glass have been generally exempted from payment of tax. Therefore, in view of the ratio laid down in the aforesaid case of Commissioner of Sales Tax V. Pine Chemicals Ltd. (1995) 96 STC 355 (SC) : (1995) 1 SCC 58, it must be held that the assessee will not be entitled to get benefit of section 8 (2A) of the Central Sales Tax Act in the facts of this case."

15. Section 8 (2-A) of the Central Sales Tax Act, requires to be noticed and therefore it is extracted. The said provision reads as follows:

> Sec. 8 (2-A) Notwithstanding anything contained in sub-section (1-A) of Section 6 or in sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.
>
> Explanation:-For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods."

16. Even the aforesaid provision came up for consideration before the

Apex Court in various decisions. The consistent view of the Courts is that, if the notification issued by the State Government grants general exemption under the State Act, then the dealer under the Act will be entitled for exemption by virtue of Section 8 (2A) of the CST Act read with the explanation. Referring to the case laws on this aspect of the matter, in our opinion, may not be necessary.

17. In the instant case, as we have already noticed that the order passed by the State Government granting certain exemption is only on finished rubber goods produced/manufactured in the factories in Kerala and it is only those industries which will be entitled for reduced rate of tax. In such circumstances, by no stretch of imagination, the said notification can be said to be a notification granting general exemption from payment of sales tax liability. In that view of the matter the assessee cannot press into service the provisions of Section 8 (2A) of the Act for grant of reduced rate of tax under the CST Act.

18. Therefore, we are of opinion that assessing authority as well as the Tribunal was fully justified in rejecting the claim of the assessee. In that view of the matter, the Sales Tax Revision Petitions require to be rejected and accordingly, it is rejected. The questions of law framed are answered against the assessee.

Ordered accordingly.

(H.L DATTU)
CHIEF JUSTICE

(HARUN-UL-RASHID)
JUDGE

MS